

Message Text

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TO AMEMBASSY SANTIAGO IMMEDIATE
INFO USMISSION USUN NEW YORKE

C O N F I D E N T I A L STATE 136322

E.O. 11652:GDS

TAGS: SHUM, PGOV, PINT, CI

SUBJECT: HUMAN RIGHTS AND CHILEAN LEGAL/JUDICIAL SYSTEM

REFERENCE: A) SANTIAGO 2936; B) SANTIAGO 3032

1. SUMMARY. CERTAIN APPARENT DISCREPANCIES IN PUBLISHED TEXTS OF THE CHILEAN GOVERNMENT'S RECENT AMNESTY LAW, AND INTERPRETATION THEREOF BY THE GOC'S FOREIGN MINISTRY LEGAL ADVISOR AMBASSADOR HERNAN RIOS, INDICATE THAT THERE ARE STILL QUESTIONS ABOUT PROVISIONS OF THE AMNESTY AND PRESENT WORKINGS OF THE CHILEAN MILITARY AND CIVILIAN JUDICIAL SYSTEMS. AN EMBASSY EVALUATION IS REQUESTED. END SUMMARY.

2. CHILEAN EMBASSY WASHINGTON NOTE NO. 98 OF APRIL 20, SENT TO DEPT IN SPANISH WITHOUT ENGLISH TRANSLATION, STATED THAT DECREE LAW 2191 DATED APRIL 18 HAD BEEN PUBLISHED IN THE OFFICIAL GAZETTE AND QUOTED ITS TEXT.
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ARTICLE 3 LIST CRIMES EXEMPT FROM THE AMNESTY, STATING "...LOS DELITOS DE PARRICIDIO, INFANTICIDIO, ROBO CON FUERZA EN LAS COSAS, O CON VIOLENCIA OF INTIMIDACION EN LAS PERSONAS, ELABORACION OR TRAFICO DE ESTUPEFASIENTES, SUSTRACCION DE MENORES DE EDAD, CORRUPCION DE MENAROE, INCENDIOS Y OTROS ESTRAGOS, VIOLACION, ESTUPRO, INCESTO, MANEJO EN ESTADO DE EBRIEDAD, MALVERSACION DE CAUDALES O

EFFECTOS PUBLICOS, FRAUDES Y EXACIONES ILEGALES, ESTAGAS Y OTROS ENGANOS, ABUSOS DESHONESTOS, ..." (AND CERTAIN ECONOMIC OFFENSES). HOMICIDE IS NOT SPECIFICALLY INCLUDED, ONLY PARACIDE AND INFANTICIDE, AND KIDNAPPING IS LIMITED TO CASES OF MINORS. IT WOULD APPEAR, IF THIS TEXT WERE TAKEN LITERALLY, THAT KIDNAPPING AND MURDER OF AN ADULT BY THE SECURITY FORCES OR BY TERRORISTS WOULD BE COVERED BY THE AMNESTY. THIS CHILEAN EMBASSY TEXT ALSO CONTAINS PARAGRAPH C OF THE DECREE LAW WHICH SPECIFICALLY EXEMPTS THE LETELIER CASE BY NAME FROM THE AMNESTY.

3. ON THE OTHER HAND, USUN A-310 DATED MAY 1, WITH COPY TO SANTIAGO, TRANSMITTED AN ENGLISH TEXT OF THE SAME LAW PROVIDED BY THE CHILEAN UN MISSION. ARTICLE 3 IN THAT TEXT DIFFERS SIGNIFICANTLY FROM THE TEXT PROVIDED TO US IN SPANISH BY THE CHILEAN EMBASSY IN WASHINGTON. THE ENGLISH TEXT HAS THE WORD "MANSLAUGHTER" BEFORE "CHILD MURDER", AND "KIDNAPPING" WITHOUT AGE QUALIFICATION. THE ENGLISH TEXT HAS NO PARAGRAPHS B AND C AND THERE IS NO SPECIFIC REFERENCE IN THE TRANSLATION TO THE LETELIER CASE. THE IMPLICATIONS OF THE DIFFERENCES ARE OBVIOUS. THEY MAY REFLECT NO MORE THAN ERRONEOUS TRANSLATION, BUT WE WOULD BE INTERESTED IN RECEIVING THE OFFICIAL TEXT BY CABLE OF DECREE LAW 2191 IN SPANISH AND IN A RELIABLE ENGLISH TRANSLATION, AS WELL AS YOUR INTERPRETATION OF THE PRECISE COVERAGE AFFORDED BY THE AMNESTY IN TERMS OF CONFIDENTIAL

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CRIMES INCLUDED AND EXEMPTED.

4. WE ARE FURTHER PERPLEXED BY STATEMENTS MADE ON MAY 3 TO ASSISTANT SECRETARY DERIAN BY AMBASSADOR HERNAN RIOS, LEGAL ADVISOR TO THE FOREIGN MINISTRY, WHO WAS THEN IN WASHINGTON ON TEMPORARY DUTY IN THE CHILEAN EMBASSY. RIOS DENIED THAT THE APRIL 18 AMNESTY PARDONED SECURITY PERSONNEL CONVICTED OF ABDUCTION, HOMICIDE OR BODILY HARM AGAINST PRISONERS. RIOS SAID THAT "NO" COMMON CRIMES WERE COVERED BY THE AMNESTY. YOUR COMMENT ON HIS CLAIM WOULD BE HELPFUL, AND YOU MIGHT SEEK HIM OUT TO CLARIFY HIS UNDERSTANDING OF THE TERMS OF THE AMNESTY.

5. RIOS ALSO ASSERTED THAT THE CHILEAN JUDICIARY WAS INDEPENDENT AND SAFEGUARDED CITIZEN'S HUMAN RIGHTS, A CLAIM THAT SEEMS UNJUSTIFIED GIVEN THE RECORD OF THAT JUDICIARY OVER THE LAST FOUR YEARS.

6. ACTION REQUESTED: UNDER THESE CIRCUMSTANCES, WE WOULD FIND VERY HELPFUL A REPORT FROM THE EMBASSY WHICH REVIEWED AND EVALUATED THE PRECISE APPLICATION OF THE APRIL AMNESTY (WE NOTE SANTIAGO 3847 WHICH TREATS ONE ASPECT), AND IN

MORE GENERAL TERMS THE PRESENT OPERATION OF THE CHILEAN
LEGAL AND JUDICIAL SYSTEM AS IT APPLIES TO INTERNAL

SECURITY CASES, POLITICAL ACTIVITIES, ETC. COMMENT UPON
THE ROUTINE FUNCTIONING OF THE CRIMINAL JUSTICE OR CIVIL
LAW SYSTEMS WOULD BE UNNECESSARY.

7. AMONG QUESTIONS WHICH WE HAVE IN MIND ARE: HOW ARE
JUDGES BEING APPOINTED IN BOTH THE MILITARY AND CIVIL
COURTS? WHAT TYPES OF TRIALS (INTERNAL SECURITY OR
"POLITICAL") ARE PRESENTLY BEING CONDUCTED IN MILITARY AND
CIVIL COURTS, AND UNDER WHAT CONDITIONS OF LEGAL REPRESENTATION,
OPENNESS TO THE PUBLIC AND PRESS, APPEAL, ETC.? UNDER PRESENT
LEVEL OF STATE OF EMERGENCY, WHAT ARE LEGAL
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POWERS OF INTERNAL SECURITY FORCES AND WHAT POWERS ARE
THEY ACTUALLY EXERCISING? WHAT ARE ACTUAL CONDITIONS OF
DETENTION, ACCESS TO FAMILIES AND ATTORNEYS, MEDICAL
ATTENTION, ETC., DURING FIVE DAYS DETENTION PERMITTED BY
LAW BEFORE CHARGES MUST BE MADE? IN PRACTICE, HOW RAPIDLY
IS GOC MOVING DETAINEES TO TRIAL AFTER ARREST? ARE THERE
ANY LEGAL OR PRACTICAL REMEDIES FOR DETAINEES IF THEY ARE
MALTREATED DURING FIVE DAY PERIOD OF INITIAL DETENTION?
WHAT PERCENTAGE OF DETAINEES ARE BEING PERMITTED BAIL OR
PROVISIONAL FREEDOM PENDING TRIAL? ARE SECURITY/POLITICAL
CASES SHIFTED TO COURTS SO LOCATED AS TO DISCOURAGE
PUBLIC ATTENTION OR HANDICAP THE DEFENSE?

8. RIOS ALSO CLAIMED THAT LAWYERS DEFENDING SUCH CASES
FACED NO DIFFICULTIES AND THAT NONE HAD BEEN TRIED OR
EXPELLED. GRANTED THAT WE KNOW OF NO SUCH ACTIONS RE-
CENTLY, WE ARE MINDFUL OF EARLIER CASES SUCH AS THOSE OF
ZALAUQUETT, MONTEALEGRE, AND VELAZQUEZ, AND WILL APPRECIATE
YOUR EVALUATION OF CURRENT ABILITY OF DEFENSE LAWYERS TO
AID THEIR CLIENTS IN INTERNAL SECURITY/POLITICAL CASES.
AMONG QUESTION OF INTEREST TO US ARE: DO ATTORNEYS HAVE
UNMONITORED AND TIMELY ACCESS TO DEFENDANTS? DO THEY
HAVE SATISFACTORY ACCESS TO COURT RECORDS IN PREPARATION
OF CASES? DO COURTS PERMIT DEFENSE CHALLENGES TO CIRCUM-
STANCES UNDER WHICH CONFESSIONS OBTAINED (HAVING IN MIND
1974 AIR FORCE TRIALS DURING WHICH ATTORNEYS WERE THREAT-
ENED WITH CHARGES WHEN THEY RAISED SUGGESTIONS OF TORTURE
HAVING BEEN USED)? ARE CONFESSIONS ALONE STILL SUFFICIENT
TO CONVICT (AGAIN, AS THEY WERE IN EARLIER PERIOD)?

9. THESE QUESTIONS ARE INTENDED ONLY TO INDICATE THE
RANGE OF OUR INTEREST. WE HOPE THAT YOU WILL BE ABLE TO
GIVE US A REPORT ALONG THESE LINES WITHIN TWO WEEKS
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10. IN ADDITION, WE WOULD LIKE YOUR EVALUATION OF HOW THE AMNESTY AND DECREES FOR PERMISSION FOR EXILES TO RETURN ARE BEING APPLIED TO THOSE REENTERING THE COUNTRY. WE HAVE RECEIVED REPORTS THAT 100 OF 263 APPLICANTS HAVE BEEN

DENIED REENTRY. VANCE

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